IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07..9..2006

CORAM

THE HON'BLE MR.A.P.SHAH, THE CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE K.CHANDRU

W.A.Nos.1070 and 1071 of 2006

R.Kumar .. Appellant in W.A.No.1070 of 2006

1. Ramdass Bharadwaj
2. Meerabhat
   Rep. by the Power of Attorney
   Ramdass Bharadwaj
3. Sukanya Rao
   Rep. by the Power of Attorney
   Ramdass Bharadwaj
4. Shantharam Bharadwaj
   Rep. by the Power of Attorney
   Ramdass Bharadwaj
5. Achyut Bharadwaj .. Appellants in W.A.No.1071 of 2006

Vs.

1. State of Tamil Nadu
   Rep. by its Secretary to Government
   Highways Department
   Fort St. George
   Chennai

2. The Member Secretary
   Chennai Metropolitan Development Authority
   Chennai - 8

3. The District Collector
   Kancheepuram District
   Kancheepuram

4. The Special Tahsildar (L.A.)
   I.T. Expressway Scheme
   Tambaram
   Chennai - 47 .. Respondents in both W.As.

PRAYER: Appeals under Clause 15 of the Letters Patent against the common order of the learned single Judge, dated 09.8.2006 in W.P.Nos.18050 and 18051of 2005.

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WP.Nos.18050 and 18051 of 2005: Petitions filed under Article 226 of the Constitution of India praying for a writ of Declaration declaring that the notification issued by the first defendant in G.O.Ms.No.92, Highways (HW1) 25.4.2005, published in Gazzette No.II (2)/HW/(340-e-2)/2005 under section 15 (1) of the Tamilnadu Highway Act 2001 in so far as it relates to acquisition of the property of the petitioner situated at Government Manavari Survey No.277-5 (part) now sub-divided as 277-5B, No.44, Kottivakkam Village, Tambaram Taluk, Kancheepuram District, beyond 23 feet from the existing western boundary of the petitioner's land as per the sanctioned plan and master plan of the second respondent, is illegal, arbitrary, discriminatory and colourable exercise of power, and inconsistent with the petitioner's lawful right acquired and become final under the provisions of the Tamilnadu Town and Country Planning Act,1971 as per the permission issued by the 2nd respondent.

For Appellant : Mr.K.M.Vijayan, SC
for M/a L.A. lAW

For Respondents : Mr.P.S.Raman
Additional Advocate General
for Mr.M.Dhandapani, AGP

JUDGEMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY K.CHANDRU, J.)

The appellant in W.A.No.1070 of 2006 had filed W.P.No.18050 of 2005 challenging the order of the first respondent in G.O.Ms.No.92 Highways (HW1) 25.4.2005 published in Gazette No.II(2)/HW/(340e-2)/2005 under Section 15(1) of the Tamil Nadu Highways Act, 2001 in so far as it relates to acquisition of the property of the petitioner situate at Government Manavari Survey No.277-5 (Part) now sub-divided as 277-5B, No.44 Kottiwakkam Village, Tambaram Taluk, Kancheepuram District, beyond 23 feet from the existing western boundary of the petitioner's land as per the sanctioned plan and master plan of the second respondent. The other five land owners, viz., the appellants in W.A.No.1071 of 2006 have filed writ petition in W.P.No.18051 of 2005 for similar relief. This, according to the appellants / petitioners, is that the acquisition made in respect of the land in question, and was inconsistent with the petitioners' lawful right, which had become final under the provisions of the Tamil Nadu Town and Country Planning Act 1971 (for short, 'TNTCP Act') as per the planning permission issued by the second respondent.

2. It is seen from the records that the District Collector, by the powers vested on him by the Government, by G.O.Ms.No.206 Highways (HN2) Department dated 29.9.2003 issued a notification under Section 15(2) of the Tamil Nadu Highways Act stating that the land found in Survey No.277/5 to the extent of 00383 Square Metres is required for the purpose of development of the Old Mahabalipuram Road (for short, 'OMR Road') into six way Traffic lane, which is rechristened as I.T. Corridor. Against the

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said notice, the appellants / petitioners in both the writ petitions filed an objection dated 20.12.2004. Their serious objections found in paragraphs 14 to 18 are extracted below:

> "14. As per the notification published on 10.12.2004, the acquisition in our land in S.No.277/5 is to the extent of 383 Sq.m. which implies that a strip of 13.78 M average width is proposed to be acquired from our land, meaning a width of 22.13 M from the centerline for the NOW proposed 41 M wide Highway (the width has arbitrarily been increased progressively from 30.5 M to 35.5 M to 38 M to 41M). This means on the opposite side of existing centerline the acquisition will be only to the distance of 18.87 M. This shows more land is proposed to be acquired on the eastern side than on the western side damaging a legally constructed recently approved building in preference to the opposite side which smacks of malafide intentions.
>
> 15. The constant varying of highway boundary and road width was also not followed by a required notification under Section 8 of the Act, taking into consideration the volume of the traffic in the road and other relevant factors required to change the width of the road three times within a period of six months.
>
> 16. We also bring to notice, when the Highways Act provides for even permission of encroachment under Section 26, we do not know how it is justifiable on the part of the Highways authority to unilaterally change the Highway boundary and acquire more land than the one provided for the Highways acquisition as per the sanctioned plan dated 27.5.2003.
>
> 17. We, therefore, state in the light of giving respect to another statutory authority namely CMDA and the law regulating development it is just and fair that the acquisition can be made only to the extent of 23 feet from our land as per the sanctioned plan in confirmity of which our development was made.
>
> 18. Any additional acquisition other than the one provided for on the date of the sanctioned plan (27.5.2003) will be a clear case of violation of

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rule of law and principles of harmonious construction of statutes."

They have also requested the Government to drop the plan to acquire the land.

3. However, the Government of Tamil Nadu issued a notification under Section 15(1) of the Tamil Nadu Highways Act, 2001 vide G.O.Ms.No.91, Highways (HW1) dated 25.4.2005, which was published in the Tamil Nadu Government Gazette Extraordinary Part II – Section 2, and the same is extracted below:

"The Governor of Tamil Nadu having been satisfied that the lands specified in the Schedule below are required for the purpose of formation of I.T. Corridor Express Way (i.e.) to extend to six lane of Old Mahabalipuram Road and it having already been decided that the entire amount of compensation to be awarded to the lands is to be paid out of the funds controlled or managed by the Chief Engineer (General), Highways Department and after having considered the cause shown by the owners or other persons having interest in the said lands, as the case may be, do hereby publish the following notice under sub-section (1) of Section 15 of the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002).

NOTICE

Under sub-section (1) of Section 15 of the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), the Governor of Tamil Nadu hereby acquires the lands specified in the Schedule below admeasuring 13637 Square metres, to be same, a little more or less are required for the purpose of the formation of I.T. Corridor Express Way to extend the six lane of Old Mahabalipuram Road.

The plan of the lands is kept in the office of the Special Tahsildar, Land Acquisition, Redial Road Scheme, Tambaram, and may be inspected at any time during office hours."

4. In that notification, appellants / petitioners' land is also mentioned at page 8 of the Schedule appended to the said notification relating to Kottivakkam Village. The total land that was sought to be acquired was 41,350 Square metres out of which, the petitioners' land is only 383 Square metres. Aggrieved against the said notification, the petitioners filed the writ petitions challenging the said notification issued under Section 15(1) of the Tamil Nadu Highways Act, 2001.

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5. A clarification petition with an affidavit was filed by the respondents.

6. The learned Judge, who heard the arguments of both the parties, by a common order dated 09.8.2006 dismissed the writ petitions after holding that there was no infirmity in the impugned notice issued by the State.

7. Before the learned Judge, an argument was advanced that the road alignment was sought to be altered with a view to favour a building on the opposite side, owned by one Vijay Shanthi Builders and though care was taken for doing optimisation in favour of the Vijay Shanthi Builders, the similar care was not extended to the writ petitioners and hence, it amounted to hostile discrimination. The learned Judge specifically recorded a finding that M/s Vijay Shanthi Builders themselves have filed separate writ petitions before this Court questioning the acquisition of their lands, and the same were dismissed on 23.02.2006 and when the matter was taken on appeal, the Division Bench of this Court also dismissed the Writ Appeals by judgment dated 30.6.2006. This argument was rightly given up before us.

8. Further, before the learned Judge, the appellants also pleaded that they were willing to surrender the entire stretch of land measuring 100' X 38', which was originally left as per the master plan costing more than Rs.80 lakhs free of cost to the Government, provided the State gives a space to an extent of 3 to 4 feet in front of the existing building. By this method, the Government will be the beneficiary and that will be the correct optimisation and this will not materially alter the plan approved by the technical authorities. These suggestions made by the appellants were considered by the Government and it was held that such an alteration of plan cannot be made and it will destroy the very concept of the Highway and the State was not willing to accede to the request. Recording the above findings, the learned Judge dismissed both the petitions and hence, the present appeals.

9. We have heard the arguments of Mr.K.M.Vijayan, learned Senior Counsel appearing for M/s LA LAW, counsel for the appellants, and also Mr.P.S.Raman, learned Additional Advocate General leading the Additional Government Pleader for the respondents and have perused the records filed in support of the appeals.

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10. Mr.K.M.Vijayan, learned Senior Counsel appearing for the appellants stated that the State will be benefitted with the offer of free gift of land to the extent of 100' X 38' (for which the present market value is Rs.80 lakhs) and this Court may direct the respondents to sympathetically consider the said offer. When this offer was once again put to the learned Additional Advocate General, he submitted that he had a complete discussion with all the officials concerned and that sincere efforts were made by them to consider the offer made by the appellants.

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The authorities involved in the execution of the project had emphatically rejected the offer and stated that this cannot be accepted as it will affect the laying down the entire stretch of the road which runs into more than 23 Kms. and only for the sake of the appellants / land owners, an alteration cannot be made in the plan. Further, he stated that the State had also undertaken a complete exercise for optimisation of all lands in question before embarking on the project and the widening of the OMR Road had already begun.

11. The learned Additional Advocate General also produced a field map showing the entire stretch of the project and also the field map relating to the area in question and tried to explain that any concession to the appellants will have the effect of reducing the foot path as per the original plan and, therefore, it may cause serious problems for road users in future. In the light of this, we directed the parties to address arguments on the appeals.

12. Mr.K.M.Vijayan, learned Senior Counsel, appearing for the appellants, reiterated the very same submissions made before the learned Judge and also filed a written brief. However, he did not seriously urge the issue relating to hostile discrimination, which point was taken before the learned judge and concluded.

13. The first submission of Mr.K.M.Vijayan is that before a Highway is formed, it requires a notification under Section 3 of the Tamil Nadu Highways Act 2001 (Tamil Nadu Act 34 of 2002). The Act is stated to have come into force on 01.12.2002 and Section 3 of the Tamil Nadu Highways Act reads as follows:

> "3.Declaration of roads, ways or lands as highways – On the recommendation made by the State Highways Authority, the Government may, by notification, declare any road, way or land to be highway and classify it as any of the following, namely:-
>
> (i) a State Highway;
> (ii) a major district road;
> (iii) other district road; or
> (iv) a village road
>
> Provided that where such road, way or land whether in whole or in part is owned by any local authority, such notification shall be issued with the concurrence of that local authority by a resolution passed by it in this behalf."

He, therefore, submitted that without notifying under Section 3 of the Highways Act, the respondents cannot invoke Section 15 of the Act and, therefore, the impugned notification issued under Section 15 (1) of the Tamil Nadu Highways Act is invalid.

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14. This argument was countered by the learned Additional Advocate General stating that the Act comprises of three different portions. While Chapter II deals with Declaration of Highways, Highways Authorities and their powers and functions, Chapter III deals with Restriction of Ribbon Development and gives Highways Authorities the power to fix highway boundary, building line, control line, etc. According to the Additional Advocate General, the acquisition of property is dealt with in Chapter IV, which is an independent chapter, and once a decision is taken either to form a highway or to widen the existing highway, then the Government can acquire lands under Section 15 of the Tamil Nadu Highways Act and all the land owners, whose lands are taken over, are entitled to compensation in accordance with law. In the present case, once the public purpose is not challenged and the acquisition proceedings by the State is covered by a concept of Ribbon Development, the writ petitioners cannot challenge the acquisition proceedings by addressing argument, which are not valid under law.

15. The learned Additional Advocate General also submitted that a by a notification issued under G.O.Ms.No.210 Highways (HN2), dated 06.10.2003 published in the Government Gazette dated 22.10.2003, the OMR Road has already been declared as the State Highways and serial No.5 to Part B of Annexure shows that Chennai – Mahabalipuram Road is starting from 13/330 Kms. and ending at 27/200 Kms. having a total length of 13.870 Kms. It is also submitted that in the present case, the authorities are only trying to widen the road with new technology so that there will be a six lane traffic providing access to various I.T. industries, which have come up along the either side of the road.

16. Mr.K.M.Vijayan, learned Senior Counsel stated that he was not really on the ground of any public purpose being involved in the project but his submission was that his clients have approached the authorities under the TNTCP Act and Section 47 of the TNTCP Act clearly states that the development of the land should be in confirmity with the development plan. Under the said Act, Section 2(19) of the TNTCP Act deals with "highway", which is having the same meaning as Section 4 of the National Highways Act and the term "development" as found in Section 2(13) of the TNTCP Act means carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development prepared under this Act and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building.

17. According to the learned Senior Counsel, under Section 17 of the TNTCP Act when a master plan is prepared, the second respondent, who is the competent authority, is to fix the highway / Major Road, boundary, etc. Therefore, when the appellants got planning permission on 27.5.2003, the said road was not declared as Highway or major road under Section 3 of the Tamil Nadu Highways Act and no revision of boundaries has been made under

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Section 8 of the Tamil Nadu Highways Act. According to the learned Senior Counsel, the power to fix the width of the road even today vests with the authority under the TNTCP Act.

18. Learned Senior Counsel appearing for the appellants also drew the attention of this Court to Section 111, which contains a non-obstante clause, which reads as follows:

> "111.Effect of other laws.-- [(1) The provisions of this Act shall be read subject to the provisions of the [Chennai] Metropolitan Water Supply and Sewerage Act, 1978 (Tamil Nadu Act 28 of 1978)];
>
> [(2)] Save as otherwise provided in this Act, the provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law, [custom, usage or contract];
>
> [(3)] [Subject to the provisions of sub-section (1) but notwithstanding] anything contained in any other law--
>
> (a) When permission for development in respect of any land or building has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development, has not been obtained;
>
> (b) When permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained."

Learned Senior Counsel appearing for the appellants also stated that he is not questioning the existence of power in the hands of the authorities but only the exercise of the very power under a statute.

19. The learned Additional Advocate General, countering the said argument, drew our attention to Section 69 of the Tamil Nadu Highways Act, 1988, which has an overriding effect over other laws and the same is reproduced below:

> "69. Act to override contract and other laws, etc.-- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything

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inconsistent therewith contained in any other law, custom, usage or contract or decree or order of a court or other authority."

20. Since both the enactments are made by the State Legislature and both contain a similar provisions, one has to find out as to which is the special law occupying the field. It is undoubtedly clear that with reference to the Highways, it is Highways Act, which holds the field. It is also a later enactment. Therefore, the argument of the learned Senior Counsel pressing Section 111 of the TNTCP Act, to have overriding effect over the Highways Act, does not merit any attention by this Court.

21. Regarding the other argument that it requires a declaration to be made as highways under Section 3 of the Tamil Nadu Highways Act, the said exercise has already been done by the State vide its notification dated 06.10.2003 (stated supra).

22. The further argument that the authority under TNTCP Act will have to decide the road boundaries and also the road width does not merit any acceptance. We hold that the present road in question, viz., OMR Road, presently called as IT Corridor, completely comes within the jurisdiction of the authorities under the Tamil Nadu Highways Act and any development of the said road including the fixation of the boundary and the width of the road have to be decided by the authorities under this Act. In this context, we may refer to Section 8(4)(a) of the Highways Act, which reads as follows:

"(4) Notwithstanding anything contained in sub-sections (1), (2) and (3), the Government may, in consultation with the State Highways Authority, having regard to the situation or the requirements of any highway or the condition of the area through which such highway passes, --

(a) fix different building line and control line for such highway"

Hence, we hold that once it is a Highway, Highways authorities can fix different building line and control line for such highway.

23. Mr.P.S.Raman, Additional Advocate General, appearing for the respondents, drew our attention to the judgement of the Supreme Court reported in AIR 1974 SC 2077 (AFLATOON vs. LT. GOVERNOR OF DELHI), particularly, to paragraph 23 of the said judgment, which is extracted below:

"The planned development of Delhi had been decided upon by the Government before 1959, viz., even before the Delhi Development Act came into force. It is true that there could be no planned development of Delhi

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> except in accordance with the provisions of Delhi Development Act after that Act came into force, but there was no inhibition in acquiring land for planned development of Delhi under the Act before the Master Plan was ready (see the decision in Patna Improvement Trust v. Smt. Lakshmi Devi ((1963) Supp (2) SCR 812 = (AIR 1963 SC 1077). In other words, the fact that actual development is permissible in an area other than a development area with the approval of sanction of the local authority did not preclude the Central Government from acquiring the land for planned development under the Act. Section 12 is concerned only with the planned development. It has nothing to do with the acquisition of property; acquisition generally precedes development. For planned development in an area other than a development area, it is only necessary to obtain the sanction or approval of the local authority as provided in Section 12(3). The Central Government could acquire any property under the Act and develop it after obtaining the approval of the local authority. We do not think it necessary to go into the question whether the power to acquire the land under S.15 was delegated by the Central Government to the Chief Commissioner of Delhi." (Emphasis added)

24. It is seen from the above judgment that even though for a planned development of Delhi, Delhi Development Act came into force, but there was no inhibition for acquiring the land for planned development under the Act before the Master Plan was ready. As seen above, the fact that actual development is permissible in an area other than developed area with the approval or sanction from the local authority did not prejudice the Central Government in acquiring the land for planned development under the Act. The Mater Plan provided under the TNTCP Act is only concerned with the planned development and has nothing to do with the acquisition of the property. Further, Section 47 of the TNTCP Act exempts the State Government, Central Government and local authorities.

25. Thereafter, the learned Additional Advocate General took our attention to the judgment of the Supreme Court reported in AIR 1999 SC 436 (BHAGAT SINGH vs. STATE OF U.P.) and particularly to paragraph 22 of the said judgment.

> "As pointed out in the above judgments, there is no need that the land proposed to be acquired by the Government for a particular public purpose should be for the same purpose or use mentioned in the master plan or Zeal Plan for the said area. Nor will the acquisition be invalid merely because the land proposed to be acquired is for a purpose other than the one

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> permitted by the master Plan or Zonal Plan applicable to that locality. Acquisition will be valid if it is for a public purpose even if it is not for the type of user permitted by the Master Plan or Zonal Plan in force at the time the acquisition is made. It will be for the beneficiary of the acquisition to move the competent authority under the Development Act and obtain the sanction of the said authority for suitable modification of the Master Plan so as to permit the use of the land for the public purpose for which the land is acquired. In fact, it may be difficult for the beneficiary of the acquisition to move the competent authority under the Development Act seeking permission to change of land use even before the land is acquired or before possession is given to the beneficiary. On the principle stated in Aflatoon's case (AIR 1974 SC 2077), it is clear that acquisition for a public purpose and obtaining permission from competent authority under the concerned Development Act for change of land use are different from one another and the former is not dependent upon the latter." (Emphasis added).

26. Therefore, in the light of the above, we hold that the impugned acquisition would not amount to variation of the declared Master Plan of the TNTCP Act and the development of Highways will not amount to an activity under Section 58 of the TNTCP Act requiring intimation to the planning authorities and approving the proposal only after getting their views / objections of the planning authority.

27. Mr.K.M.Vijayan, learned Senior Counsel appearing for the appellants, thereafter submitted that dehors all the above illegalities allegedly done by the first respondent that the writ petitioners have not been shown equity and equal protection of law and they have taken sufficient steps to prevent the demolition of the building of the writ petitioners which had come into existence strictly in accordance with law and as per the road boundary statutorily fixed by the authorities and enforceable even today and they should have accommodated 3 to 4 feet in the existing building. This exercise as to whether the writ petitioners' building should be allowed to stand by providing 3 to 4 feet in front of the said building, has already been done by the authorities more than once which was recorded by the learned Judge. In any event, as per the sketch shown by the State, it is not the appellants' building alone that had come under the acquisition. But hindrance of all the buildings are sought to be removed either partially or fully for the purpose of widening the OMR Road.

28. In a matter of this magnitude, where the State has undertaken a mega project in providing a Express Highway comprising of six lane with a

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view to make infrastructure development to IT companies, public interest requires that such an activity should be allowed to proceed and cannot be stultified by the litigation indulged by the appellants, who have expressed their private interest in these appeals. The learned Senior Counsel appearing for the appellants fairly conceded that the power to acquire any land for public purpose is always available to the authorities and once the compensation is given, the power is complete and that is the correct legal position. In the present case, there is no deviation or violation of any procedure established by law and the appellants / writ petitioners cannot have any legal grievance.

29. We find there are no substance in the arguments addressed on behalf of the appellants and hence, both the writ appeals fail and accordingly, they shall stand dismissed. However, the parties are directed to bear their own costs.

gri

Sd/-
Asst. Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government
   State of Tamil Nadu
   Highways Department
   Fort St. George, Chennai

2. The Member Secretary
   Chennai Metropolitan Development Authority
   Chennai - 8

3. The District Collector
   Kancheepuram District
   Kancheepuram

4. The Special Tahsildar (L.A.)
   I.T. Expressway Scheme
   Tambaram
   Chennai - 47

+ 2 Ccs to M/S.La Law Advocate Sr.No.41274.
+ 1 Cc to Government Pleader, Sr.No.41355.

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